RECORD.

SUPREME COURT OF THE UNITED STATES.

[illegible] ROBERT CLEMENTS, JR. HEIRS,

vs.

ROBERT BATES,

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA.

[illegible] 1857.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

EDWARD A. BLUNT
vs.
ROBERT BATES.

The action was commenced in a State Court on a promisory note made by appellant in favor of appellee, dated 1st February, 1864, payable one day after date for $6,210.

When the note was offered in evidence it was objected to because "it contained no Internal revenue stamp." Thereupon the Court permitted the plaintiff's attorney to affix the necessary stamp. This was excepted to. A judgment having been rendered for the plaintiff, the case was taken by appeal to the Supreme Court of the State, where the judgment was affirmed, and the case is now brought here under the 25th section of the Judiciary Act.

The State Court has, it is true, passed upon the construction of a Statute of the United States. The interpretation given to it may or may not be erroneous. But in doing this it has not decided against any right or authority, privilege or exemption derived by the defendant from the laws or Constitution of the United States.

The decision was upon a questionof evidence only. The note was but the evidence ot an indebtedness, and if defective for the purpose, a recovering could be had on the common counts.

The admission of illegal evidence gives no jurisdiction to

this Court under the 25th section, upon the ground that the evidence was admitted contrary to a Statute of the United States.

Walworth vs. Kneeland, 15 How. 348.

Lewis vs. Campan, 3 Wall. 106.

The Supreme Court of the State held that in Alabama the attorney was the authorized agent of his client for the purpose of affixing the stamp.

That the note was to be presumed, in the absence of anything to the contrary, to have been made in Alabama.

The rulings are conclusive upon this Court.

By the 158th section of the Act 30th June, 1864, 13 Stat. p. 293, the unstamped paper is only invalidated when the *intent* to defeat the provisions of the act exists.

The 163d section, as to instruments made *prior to the act*, authorizes them to be used in evidence if the person, "his agent, or attorney" placed the proper stamp upon them "in presence of the Court."

The Act of 3d March, 1865, 13 Stat., p. 481, amends the 158th section of the Act of 1864, as to the mode of affixing the stamp.

But it does not repeal the 163d section, and there is nothing in either of these Acts which forbids the use of such instruments in evidence, except where the stamp has been omitted with the intent to defeat the Statute.

By the Act 13th July, 1866, (14 Stat. p. 143,) these Statutes have been modified in this particular—they make void the instrument for want of a stamp, and omit the provision as to the "intent" of the parties.

After providing for the mode of affixing stamps when it had not been previously done, it enacts "That where a party had not affixed a stamp upon any instrument made at a time when, *or place where*, no Collection District was established, it shall be lawful for him, or any party having an interest therein to affix the proper stamp, and the instrument to

which the proper stamp has been affixed, prior to 1st January, 1867, shall be as valid to all intents and purposes as if stamped by the Collector in the manner herein provided for."

Under these Statutory provisions, it is submitted that the judgment must be affirmed, if the Court should entertain jurisdiction of the case.

The decision in question is sustained by the Courts of Massachusetts, Pennsylvania, New York, and California.

Tobey vs. Chipman, 13 Allen, 126.

McGovorn vs. Hornback, 53 Penn. 179.

Holback vs. Jackson, 34 Cal. 175.

P. PHILLIPS,

For Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 294.

EDWARD A. BLUNT, PLAINTIFF IN ERROR,

vs.

ROBERT BATES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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a Supreme Court of the State of Alabama.

EDWARD A. BLUNT
vs.
ROBERT BATES.

UNITED STATES OF AMERICA, *ss:*

To the honorable A. J. Walker, chief justice of the Supreme Court of the State of Alabama:

Your petitioner, Edward A. Blunt, one of the parties in the above-entitled cause, respectfully showeth unto your honor that a final judgment in said cause was rendered by the Supreme Court of the State of Alabama, at a term of said court, holden on the thirteenth day of February, in the year of our Lord one thousand eight hundred and sixty-seven, it being the highest State court in which a decision could be had in said cause within the State of Alabama; and that in the hearing of said cause in the said Supreme Court, whereon the said final judgment was rendered, the said petitioner, by his counsel, then and there claimed a right, title, privilege, or exemption, under and by virtue of the stamp laws enacted in that behalf by the Congress of the United States, in this, that the promissory note therein sued on, and which was the foundation of said suit, was not stamped with United States internal revenue stamp, and the said stamps thereon cancelled, as is by the said statutes of the United States required, before the said note was admitted in evidence on the trial of said cause in the court below, and that said note was all the evidence there was in said cause; and that thereupon it became necessary, as by the record in the said cause and the opinion of said court fully appears, for the said Supreme Court to construe the said statutes of the United States in regard to the stamping of said note; and that the said Supreme Court did then and there construe said statutes in deciding said cause; and that the decision so made upon the construction of said statutes was adverse to the right, privilege, title, or exemption specially set upon and claimed by petitioner in said cause in relation to the stamping of said note, and the cancellation of the stamps thereon, under and by virtue of the said statutes of the United States, in consequence whereof a manifest error hath happened, to the great damage of the said Edward A. Blunt; all of which appears of record. Wherefore, your petitioner prays your honor that a writ of error may by your honor be issued, according to the statute in such case made and provided, directed to the said honorable judges of the Supreme Court of the State of Alabama, commanding them that under their seal, distinctly and openly, they do send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that they may have the same at Washington, on the first Monday of December next, in the said Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and

according to the laws and customs of the United States, should be done. And your petitioner, as in duty bound, will ever pray, &c.

Signed at Montgomery, in the State of Alabama, this the 23d day of February, A. D. 1867.

EDWARD A. BLUNT.

A writ of error, as prayed for in the foregoing petition, is allowed; and a citation, as prayed for, is also allowed.

Feb'y 23d, 1867.

A. J. WALKER,
Chief Justice Supreme Court of Alabama.

Filed in my office this 23d Feb'y, 1867.

J. D. PHELAN,
Clerk Sup. Co. of Ala.

Endorsed: Edward A. Blunt *vs.* Robert Bates. Petition for allowance of citation and writ of error.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Supreme Court of the State of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Alabama, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Edward A. Blunt and Robert Bates, wherein was drawn in question the construction of a clause of a statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said statute of the United States, a manifest error hath happened to the great damage of the said Edward A. Blunt, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first day of the next term of the Supreme Court of the United States, to wit, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-third day of February, A. D. one thousand eight hundred and sixty-seven.

SEAL.] LAWRENCE WORRALL,
Clk Cir. C't So. Dist. Ala.

[3 25 cents internal revenue stamps]

Writ of error allowed.

The foregoing writ of error is allowed; and bond, with sufficient security, payable and conditioned according to law, for the damages and costs, is approved by me; and the writ of error, with said bond, shall operate as a supersedeas.

February 23, 1867.

A. J. WALKER,
Chief Justice of the Supreme Court of the State of Alabama.

Filed in my office this 23d February, 1867.

JNO. D. PHELAN,
Clerk Sup. Co. of Ala.

Endorsed: Edward A. Blunt, plaintiff in error, *vs.* Robert Bates, def't in error. Writ of error to the Supreme Court of the United States.

1c [Copies.]

EDWARD H. BLUNT
vs.
ROBERT BATES.

SUPREME COURT OF THE STATE OF ALABAMA, *ss:*

Decided by the said Supreme Court of the State of Alabama, at its January term, A. D. 1867, to wit, on the 13th day of February, A. D. 1867.

Know all men by these presents, that we, Edward A. Blunt, as principal, and Beverly B. Walker and John F. Vary, as his sureties, all of the county of Perry, in the State of Alabama, are held and firmly bound unto Robert Bates, of said county and State, in the sum of seventeen thousand dollars, to be paid to the said Robert Bates, his executors and administrators, to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

2 Sealed with our seals, and dated this the 23d day of February, A. D. one thousand eight hundred and sixty-seven.

Whereas the above-named Edward A. Blunt hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the Supreme Court of the State of Alabama.

Now therefore the condition of this obligation is such, that if the above-named Edward A. Blunt shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make

good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] (Signed) EDWARD A. BLUNT.
By W. L. BRAGG,
His Attorney-in-fact.

[SEAL.] BEVERLY B. WALKER,
By W. L. BRAGG,
His Attorney-in-fact.

[SEAL.] JOHN F. VARY.
By W. L. BRAGG,
His Attorney-in-fact.

Feb'y 23d, 1867.

Sealed and delivered in the presence of, and approved by, me.
(Signed) A. J. WALKER,
Chief Justice of the Supreme Court of the State of Alabama.

[50-ct. in. rev. U. S. canc'led.]

Filed in my office this 23d day of Febr'y, 1867.
(Signed) JNO. D. PHELAN,
Clerk Sup. Co., Ala.

3d STATE OF ALABAMA, *Perry County:*

Know all men by these presents, that whereas I, Edward A. Blunt, of said county and State, desire the decision and judgment of the Supreme Court of said State, made and rendered at its present term in a certain cause in said court, wherein I, the said Blunt, am appellant, and one Robert Bates is appellee, to be reviewed by the Supreme Court of the United States; now therefore we, the said Edward A. Blunt, B. B. Walker, and Jno. F. Vary do, hereby constitute and appoint William P. Chilton, sr., and Walter L. Bragg, or either of them, our true and lawful attorneys, in our name and stead, to sign, seal, and deliver such bond as may be necessary and proper for the removal of said cause, either by appeal or writ of error, from the said Supreme Court of the State of Alabama into the Supreme Court of the United States. The name of the said E. A.
4 Blunt to be signed to said bond as principal, and the name of said B. B. Walker and Jno. F. Vary, to be signed thereto, as his sureties; the said bond to be made in such sum or amount as may be necessary for the stay of execution, and either of our attorneys being hereby authorized to sign our said names to said bond, and we hereby ratify and confirm what our said attorney, or either of them, may do by virtue of these presents.

In witness whereof we hereunto set our hands and seals, on this the 23d day of February, A. D. 1867.

[SEAL.] (Signed) E. A. BLUNT.
[SEAL.] B. B. WALKER.
[SEAL.] JNO. F. VARY.

[50-ct. in. rev., U. S. cancel'd.]

5e [Copy of substituted bond.]

EDWARD A. BLUNT
vs.
ROBERT BATES.

SUPREME COURT OF THE STATE OF ALABAMA, *ss*:

Decided by the said Supreme Court of the State of Alabama, at its January term, A. D. 1867, to wit, on the 13th day of February, A. D. 1867.

Know all men by these presents, that we, Edward A. Blunt, as principal, and John F. Vary, of the county of Perry, in the State of Alabama, and Thomas Walker, of the county of Dallas, in the State of Alabama, as his sureties, are held and firmly bound unto Robert Bates, of the county of Perry, in the State of Alabama, in the sum of seventeen thousand dollars, to be paid to the said Robert Bates, his executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and ad-
6 ministrators firmly by these presents. Sealed with our seals, and dated this 23d day of February, A. D. one thousand eight hundred and sixty-seven.

Whereas the above-named Edward A. Blunt hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the Supreme Court of the State of Alabama; now therefore the condition of this obligation is such, that if the above-named Edward A. Blunt shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed with our hands and seals the day and year above written.

[SEAL.] (Signed) E. A. BLUNT.
[SEAL.] JNO. F. VARY.
[SEAL.] TOM. WALKER.

[50-ct. in. rev. U. S. canc'l'd.]

Approved:
(Signed) A. J. WALKER, *C. J.*

7f *Copy of agreement of counsel.—Writ of error from the Supreme Court of Alabama to the Supreme Court of the United States.*

EDWARD A. BLUNT
vs.
ROBERT BATES.

As counsel for Edward A. Blunt and Robert Bates, the same whose names appear in the within writ of error bond, we consent that said bond shall be substituted in the place of the original writ of error bond in this cause, made on the 23d day of February, A. D. 1867,

and signed by said Blunt, as principal, and John F. Vary and Beverly B. Walker, as his sureties; and that said bond so substituted shall have the same force and effect in law and in fact as if it had been made, signed, and approved on said last-named day, and that no exception shall be taken to the same hereafter on account of its being a substituted bond; and we hereby authorize the Honorable A. J. Walker, chief justice of the Supreme Court of Alabama, to
8g approve the said substituted bond, as of the 23rd day of February, A. D. 1867.

Given under our hands and seals this the first day of July, A. D. 1867.

[SEAL.] (Signed) W. L. BRAGG,
Attorney for Edward A. Blunt.
WM. M. BROOKS,
Att'y for Bates.

[5-c. in. rev. U. S. cancelled.]

I, John D. Phelan, clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing, on pages from 1 to 8 inclusive, contain true, perfect, and complete copies of the original writ of error bond, the substituted bond, and the papers connected therewith, in cause wherein E. A. Blunt is plaintiff in error and Robert Bates is defendant, which said bonds and papers are now on file in my office.

Witness:

JNO. D. PHELAN, *Clerk.*

Endorsed: Copies. Blunt *vs.* Bates. Copies of writ of error bond, substituted bond, and agreement of counsel.

1 *Caption of the Sup. Court.*

Be it remembered, that at a term of the Supreme Court of Alabama, begun and held at the capitol, in the city of Montgomery, on Monday, the seventh day of January, in the year one thousand eight hundred and sixty-seven, (A. D. 1867,) there were present and presiding as judges of said court, Honorable Abram J. Walker, chief justice; Honorable Wm. M. Byrd, associate justice; Honorable Thomas J. Judge, associate justice, before whom the following proceedings were had, to wit:

There was filed in the office of the clerk of said Supreme Court, on the 12th day of January, A. D. 1867, the following transcript of the record and proceedings in the case of Robert Bates, plaintiff, *vs.* Edward A. Blunt, defendant, from the Circuit Court of Perry county, in said State, in the words and figures following, to wit:

Circuit Court, fall term, A. D. 1866.

Caption of Cir. Court.

STATE OF ALABAMA, *Perry County*:

Be it remembered, that at a term of the Circuit Court, begun and held in and for the county and State aforesaid, in the town of Marion,

on the 29th day of October, A. D. 1866, it being the fifth Monday after the fourth Monday in September, present and presiding the honorable James Cobbs, judge of the seventh judicial circuit of said State, the following proceedings were had, to wit:

Summons.

STATE OF ALABAMA, *Perry County*:

To any sheriff of the State of Alabama, greeting:

2 You are hereby commanded to summon Edward A. Blunt to appear at the next term of the Circuit Court, to be held for said county, at the place for holding the same, then and there to answer the complaint of Robert Bates.

Witness my hand this 22nd day of October, 1865.

A. CAIN, *Clerk.*

Complaint.

ROBERT BATES
vs.
EDWARD A. BLUNT.

THE STATE OF ALABAMA, *Perry County*:

The plaintiff claims of the defendant, Edward A. Blunt, sixty-two hundred and ten 08-100 dollars, due by promissory note made by him on the first day of February, 1864, and payable one day after date, with interest thereon from date.

MOORE & BROOKS,
Pl'ff's Att'ys.

Rec'd Oct. 23, 1865; executed same day by copy.

R. W. COLE, *Sheriff.*
Per LIVINGSTON.

Return of the jury.

We, the jury, find for the plaintiff, and assess the damages at seven thousand five hundred ninety-six dollars and ninety-eight cents, ($7,596 98.)

DANIEL COUCH, *Foreman.*

November 14th, 1866.

Judgment entry.

Came the parties, by attorney, and issue being joined, thereupon came a jury of twelve good and lawful men, to wit, Daniel Couch and eleven others, who, being duly elected, empannelled, and
3 sworn to well and truly try the issue joined, on their oaths say, they find the issue in favor of the plaintiff, and assess his damages at seven thousand five hundred and ninety-six 98-100 dollars. It is therefore considered by the court that the plaintiff have and recover of the defendant the said sum of seven thousand

five hundred and ninety-six 98-100 dollars, the damages so assessed by the jury aforesaid, together with the costs of suit in this behalf expended, for which execution may issue, &c.

In the Circuit Court of Perry county, fall term thereof, A. D. 1866.

Bill of exceptions.

ROBERT BATES
vs.
EDWARD A. BLUNT. } No. 1,885.

Be it remembered, that on this, the 14th day of November, A. D. 1866, at a term of the Circuit Court, held in and for the county and State aforesaid, present and presiding the Honorable James Cobbs, the above-entitled cause came on for trial, on issue joined between the parties; whereupon the plaintiff, by his attorney, offered to read as evidence to the jury the cause of action sued on in this cause, which was a promissory note made and signed by the defendant, and dated the first day of February, A. D. 1864, in the sum of six thousand two hundred and ten and 08-100 dollars, and contained no United States internal revenue stamp, to which the defendant objected, as being allowed to go to the jury as evidence, because the said
4 promissory note contained no internal revenue stamps, which objection the court overruled, and allowed the plaintiff's attorney to place the necessary stamps by law on the said note; to which ruling of the court the defendant, by his counsel, at the time excepted; and thereupon the plaintiff's attorney, after placing the said internal revenue stamps on the said promissory note, without having cancelled the same in any manner whatever, proceeded to read the said promissory note, on which the said stamps had been placed, as evidence, the general objection of the defendant thereto being then overruled, to which the defendant, by his counsel, at the time excepted.

This was all the evidence in the cause; and thereupon the court charged the jury, if they believed the evidence, to find for the plaintiff the amount of the said note, with interest thereon to the present time; and to this charge the defendant, by his counsel, at the time excepted.

The rulings of the court, in permitting the plaintiff's attorney to affix the stamps to the said promissory note, and read the same as evidence to the jury, without having first cancelled said stamps, and also in charging the jury to find for the plaintiff on this as evidence, are now assigned for error.

Given under my hand and seal, as presiding judge of said court, in open court, this the fourteenth day of November, A. D. 1866.

[SEAL.] JAMES COBBS,
Judge 7th Judicial Circuit of Alabama.

5 *Appeal bond.*

THE STATE OF ALABAMA, *Perry County:*

We, Edward A. Blunt, as principal, and Beverly B. Walker and John F. Vary, as his securities, acknowledge ourselves to owe and be indebted to Robert Bates, his heirs, executors, administrators, and assigns, in the sum of fifteen thousand two hundred and eleven and $\frac{48}{100}$ dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals, and dated this the twenty-first day of November, A. D. 1866.

Whereas, at the fall term, 1866, of the Circuit Court of and for said county, on, to wit, the fourteenth day of November, A. D. 1866, the said Robert Bates recovered a judgment in said court against the said Edward A. Blunt, for the sum of seven thousand five hundred and ninety-six $\frac{98}{100}$ dollars, debt and damages, and the further sum of eight and $\frac{76}{100}$ dollars, the costs in that behalf expended. And, whereas, on the said fourteenth day of November, A. D. 1866, the said Edward A. Blunt, as such defendant, has prayed and obtained an appeal from the said judgment to the next term of the Supreme Court, to be holden of and for said State, by a bill of exceptions, signed by the judge of said court to that effect.

Now, therefore, the condition of the foregoing obligation is such, that if the said Edward A. Blunt shall prosecute his said appeal to effect and satisfy such judgment as the Supreme Court may
6 render in the premises, then the said obligation to be null and void, otherwise to remain in full force and effect.

[L. S.] E. A. BLUNT.
[L. S.] B. B. WALKER.
[L. S.] JOHN F. VARY.

Approved:

THOMAS L. MITCHELL, *Clerk.*

[United States 50-cent rev. stamp.]

Citation.

Office of the Clerk of the Circuit Court of Perry county, in the State of Alabama.

THE STATE OF ALABAMA, *Perry County:*

To Robert Bates, or William M. Brooks, esquire, his attorney of record, greeting:

Whereas, Edward A. Blunt has taken an appeal to the next term of the Supreme Court, from the judgment rendered by the Circuit Court, in and for the county of Perry, in the State of Alabama, at the fall term thereof, in the year eighteen hundred and sixty-six, in the cause of Robert Bates against Edward A. Blunt, which said judgment, as thus rendered, was for the sum of seven thousand five hundred and (ninety-six) $\frac{98}{100}$ dollars.

Now, therefore, you are hereby cited to appear at the next term of said Supreme Court, to be held in the year eighteen hundred and sixty-seven, then and there to defend on said appeal, if you shall think proper so to do.

Witness my hand this the fourteenth day of December, in
7 the year of our Lord one thousand eight hundred and sixty-six.

THOMAS L. MITCHELL, *Clerk.*

Rec'd Dec'r 24, 1866. Executed 24th Dec., 1866, on W. M. Brooks, esq., by handing him a copy of the within.

H. H. MOSELEY, *Sh'ff.*
By W. C. MOSELEY, *D. S.*

Clerk's (Cir. Court) certificate.

THE STATE OF ALABAMA, *Perry County:*

I, Thomas L. Mitchell, clerk of the Circuit Court of Perry county, and State of Alabama, hereby certify, that on the fourteenth day of November, A. D. 1866, Edward A. Blunt, the defendant in the foregoing stated case, applied for and obtained an appeal to the January term, 1867, of the Supreme Court of the State of Alabama; and that the foregoing pages, numbered from one to five inclusive, contain a complete transcript of all the proceedings had in the Circuit Court of Perry county, in the case of Robert Bates against Edward A. Blunt, and that the same is as full and complete as appears of record, or on file, in my office.

Given under my hand and seal of office, at office in Marion, this the tenth day of January, A. D. 1867.

[SEAL.] THOMAS L. MITCHELL, *Clerk.*

[One-dollar State stamp, canc'l'd.]

On the body of this transcript is endorsed the following: Filed Jan'y 12th, 1867. Phelan, clerk.

8 State of Alabama, Supreme Court.—January term, A. D. 1867.

Assignment of errors.—Copy of the assignment of errors filed in the case.

EDWARD A. BLUNT, appellant,
vs.
ROBERT BATES, appellee.

And now comes the said appellant, by attorney, and says, that in the trial and proceedings had in this cause in the court below, manifest errors intervened, and he assigns for error—

1st. The court erred in permitting the attorney for the plaintiff to place the United States internal revenue stamps upon the note, as set forth in the bill of exceptions in this cause, without first requiring him to show that he had been specially authorized and directed by the plaintiff, or some other person interested therein, so to do,

or that he, the said attorney, had an interest therein, which authorized him to affix the said stamps.

2nd. The court erred in not requiring the plaintiff to show that the said note had been made at a time when, and a place where, there was no collection district at the time it was made or issued, before allowing the said stamps to be placed upon the said note on the trial, as shown by the bill of exceptions.

3rd. The court erred in not requiring the plaintiff to show that the said note had not been stamped with United States internal
9 revenue stamps as required by law, at the time the same was made, or issued on account of accident, mistake, or inadvertence, or urgent necesity, before allowing the said stamps to be placed upon it on the trial of this cause.

4th. The court erred in not requiring the plaintiff, or some other person lawfully authorized so to do, to cancel the said stamps in the manner required by law, at the time they were placed on the said note, as shown by the bill of exceptions.

5th. The court erred in permitting the plaintiff's attorney to read the said note as evidence to the jury, on the trial of this cause, without the said stamps having been first cancelled, as required by law.

6th. The court erred in permitting the jury to regard the said note as evidence before them in the trial of this cause, on which to predicate a verdict, and in charging them upon that alone, that if they believed the evidence, they must find for the plaintiff, as shown by the bill of exceptions.

7th. The court erred in overruling the objection of the defendant to the giving of the said note in evidence to the jury, as shown by the bill of exceptions.

8th. The court erred in allowing the plaintiff's attorney to place stamps on the said note, as shown by the bill of exceptions.

9th. The court erred in allowing the plaintiff's attorney to read the said note as evidence to the jury against the exceptions of the defendant, after the said attorney had placed stamps upon it, in the manner, and as shown by the bill of exceptions, and without his having in any manner whatever cancelled the same.

10th. The court erred, as shown by the bill of exceptions.

11th. The court erred in allowing the plaintiff's attorney to affix the stamps at all.

LOCKETT & BRAGG,
P. B. LAWSON,
VARY & JOHNSTON,
Atorneys for Appellant.

10 Supreme Court of Alabama.

EDWARD A. BLUNT
vs.
ROBERT BATES. } 4 div. 4,452.

TUESDAY, *January 22nd*, 1867.

Came the parties by their attorneys, and this cause having been argued at the bar, is submitted for a decision.

Copy of the opinion of the court, delivered by Byrd, J.

The main question in this cause is, whether the court below erred in allowing a promissory note made in February, 1864, as described in the complaint, to be introduced in evidence to the jury without being stamped and the stamp cancelled. If it was admissible, the charge of the court was correct; for it fully met the requirements of the rule, that the plaintiff must prove substantially the allegations of the complaint to entitle himself to a recovery.

The bill of exceptions purports to set out all the evidence introduced on the trial of the cause, and it must therefore be considered as all that was introduced on the trial to the court or jury. No presumption therefore can be indulged to sustain the rulings of the court. This court can only make such intendments and presumptions as the court below or the jury under the instructions of the court were authorized by law to make, from the facts contained in the bill of exceptions.

Whether the note introduced in evidence was made in the United States, or out of them, whether in the State of Alabama, or beyond its limits, or whether in a State where there was no collection district established at the time it was made, or not, are all questions capable of solution by evidence.

Was the note admissibe in evidence?

11 The appellant contends that it was not, and that the court should have excluded it from the jury, on the ground that the note was not stamped and the stamp cancelled as required by the laws of the United States; and further, the presumption of law is, that the note was executed in a State where there was a collection district established at the date of its execution.

It seems that this cause was tried on the general issue, which devolved on the plaintiff the necessity of making out a prima facie case in order to entitle him to a verdict and judgment. The introduction in evidence of the note to the jury under such an issue makes out such a case. But it is said the court erred under such an issue in allowing the note to be read in evidence without a proper stamp and cancellation thereof. Without deciding whether the appellant has properly raised the question that no stamp was affixed to the note, under the phrase that it "contained no internal revenue stamps," so as to avail himself of an objection to the note for the want of a proper stamp, we will proceed to discuss the question as though it was sufficiently made in the court below.

Under the stampt act, if the note was one made in the United States, it was the duty of the maker, at the time it was executed, to stamp it and cancel the stamp; upon his failure the payee was authorized in certain cases to do so. If the note was made in a foreign country, payable generally, then it was unnecessary to stamp it to give it validity. If it it was made in the United States, in a place where no collection district was established at the time it was made, then any party having an interest therein may affix the proper stamp thereto prior to the 1st Jan'y 1867.—(Statutes at Large, 39 Congress, 143.)

An attorney has a lien on the papers placed in his hands by his client, for the payment of his fees. (St. John *vs.* Diendorf, 12 Wend, 261. Story on Agency, §. 383.) He therefore has an interest in the note sued on by virtue of the lien, which the law confers.

12 It would seem from the authorities that an attorney-at-law, to whom a note is delivered for collection, has the power, under the authority thus conferred, as a general rule, to do all acts which the client could do necessary to protect his rights, and which are beneficial to him, and such acts will be presumed to be authorized, until repudiated by him. (Kirksey *vs.* Jones. 7 Ala., 623. Pond *et al. vs.* Lockwood *et al.*, 8 ib. 675.) This case is not within the influence of any exception to that rule.

The last proviso, on page 143, of § 9 of that act, is a provision in favor of any instrument embraced within the letter of that act and the act to which it is an amendment, and takes them out of the other provisions of both acts; the proviso only requires such instruments to be stamped prior to the 1st of January, 1867, and if so stamped, makes them as valid, to all intents and purposes, as if stamped by the collector. The proviso does not require the party to cancel the stamp, and being a penal statute in part, we must construe it strictly for the protection of the citizen, and perhaps liberally for the public on a question of revenue merely. If the note was "signed or issued" at a time when, and at a place where, no collection district was established, then it was not necessary to cancel the stamp to make the note valid, however it may have been necessary to do so under the regulations of the Treasury Department for other purposes. If the note was "signed or issued." in this State, in 1864, then there was no collection district established here, and the note being stamped as required by the act, the court did not err in allowing it to be read in evidence. Besides, under the influence of the opinion in the case of Watson and wife *vs.* Stone, delivered at the present term of the court, the laws of the United States were not actually in force in this State when the note was made, and therefore the revenue laws then enacted could not render void or invalidate a note which was made under the circumstances of this one.

The court, under the facts of this cause, could have instructed the jury that the legal presumption is that the note was "signed

13 or issued" in this State at its date. (Hargrove *vs.* Smith. 1st Ala., 80. Smith *vs.* Robinson, 11 Ala., 270.) But no charge was asked or given on this point, unless it is involved in the charge given.

The party excepting must clearly and affirmatively show error, otherwise the judgment of the court below must be affirmed. (Knapp *vs.* McBride *et al.*, 7 Ala., 19; Smith *vs.* Robinson, supra.) If the note was "signed or issued" in a State where there was a collection district established at its date, then there would be much force in the position of appellant; but he fails to show that such was the fact, and the court or jury could not presume its existence, as it would have involved both appellant and appellee in a violation of the law;

and this should never be done when a presumption of innocence can be indulged.

It results that the court below did not err, and the judgment must be affirmed.

Supreme Court of Alabama.

Judgment.

EDWARD A. BLUNT *vs.* ROBERT BATES. } 4 div., 4,452.

WEDNESDAY, *February* 13, 1867.

Came the parties, by their attorneys, and the record and the matters assigned for error therein being argued and examined, it seems to the court that in the record and proceedings of said Circuit Court of Perry county there is no error.

It is therefore considered by the court that said judgment of said Circuit Court be in all things affirmed, and that said appellee recover of said appellant, and of Beverly B. Walker and John F. Vary, sureties, the amount of said judgment, ten per cent. damages thereon, and interest, together with the costs of this court and said
14 Circuit Court.

Copy of the opinion of the court, upon application for a rehearing, delivered by Byrd, J.

Since the decision of this cause, the appellant has sued out a writ of error to the Supreme Court of the United States, and afterwards filed an application for a rehearing in this court. Without considering the effect of these proceedings on each other, and without replying to the positions taken by the counsel for appellant in their argument for a rehearing, we are satisfied with the result attained in the above opinion. The objection of the counsel of appellant in the court below was, that the "note contained no internal revenue stamps," and that the court "allowed the plaintiff's attorney to place the necessary stamps required by law on the said note," and he now insists that "to place" is not to affix. It is sufficient to say, if the words "to place" are not equivalent to the word "affix," they are at least as appropriate as the word "contained," used by the counsel in making his objection. We have not decided that the word "contained" raises the question of a failure to stamp.

It seems that the revenue law only declares such instruments void when issued with intent to defraud; and it is difficult to see how such "intent" could exist on the part of the appellant when he executed the note, or of the appellee, when he received it, and there was no collection district established in this State, when the note was executed and received by the parties.

Application refused.

15 Supreme Court of Alabama.

EDWARD A. BLUNT
vs.
ROBERT BATES. } 4 div., 4,452.

THURSDAY, *February 28th*, 1867.

The application by the appellant for a rehearing in this cause having been duly examined and considered by the court, it is ordered that the same be overruled.

Supreme Court.

THE STATE OF ALABAMA:

I, John D. Phelan, clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing fifteen pages contain a true, full, and complete transcript of the record and proceedings, in a cause pending in said Supreme Court, wherein Edward A. Blunt is appellant and Robert Bates is appellee, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court, this 17th day of August, A. D. 1867.

[SEAL.] JNO. D. PHELAN, *Clerk.*

[2-dollar U. S. rev. stamp.]

Supreme Court of the State of Alabama.

UNITED STATES OF AMERICA, *ss:*

To Robert Bates, or Andrew B. Moore, esquire, or Willard M. Brooks, esquire, his attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Alabama, wherein Edward A. Blunt is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. J. Walker, chief justice of the said Supreme Court of the State of Alabama, this the twenty-third day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

A. J. WALKER,
Chief Justice of the Supreme Court of the State of Alabama.

Filed in my office this 23d Feb'y, 1867.

JNO. D. PHELAN,
Clerk Sup. Co. of Ala.

On this 23d day of November, in the year of our Lord one thousand eight hundred and sixty-seven, personally appeared Henry H. Mosely, sheriff of Perry county, in the State of Alabama, before

me, the subscriber, Wm. Q. Smith, an acting U. S. commissioner for the middle district of Alabama, and the said Henry H. Mosely, sheriff aforesaid, makes oath that he delivered a true copy of the within citation to Andrew B. Moore, esquire, attorney of record for the within-named Robert Bates, on the 26th day of October, 1867, and that said affiant is the sheriff of Perry county, in the State of Alabama.

HENRY H. MOSELEY.

Sworn to and subscribed before me, at my office, this November 23d, A. D. 1867.

[SEAL.]

WM. Q. SMITH,
U. S. Com. Middle Dist. Alabama.

[Two 2-cents U. S. rev. stamps.]

Endorsed: Edward A. Blunt, plaintiff in error, *vs.* Robert Bates, defendant in error. Citation. Rec'd in office Oct. 26, '67. H. H. Moseley, sh'ff Perry county, Ala. Executed October 26th, 1867, by handing copy of within to A. B. Moore, esq., att'y of record. H. H. Moseley sh'ff P. c., Ala. Sup. C't U. S. 1867. Dec. term. No. 294. Blunt, P. E., *vs.* Bates. Filed 3d December, 1867.